IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

WP(C).No. 26990 of 2007(S)

(AGAINST THE COMMON ORDER DATED 06-08-2007 IN I.A. 520/2007 IN O.P 622/2006 , I.A. 521/2007 IN O.P 623/2006 AND C.M.P 1468/2007 IN MC 633/2006 OF FAMILY COURT MALAPPURAM)

PETITIONER:

MOHAMMED MUSTHAFA AGED 27 YEARS
S/O MOHAMMED KOYATTI, KALATHINGAL HOUSE, KOLATHARA P.O
CHERUVANNUR AMSOM DESOM, KOZHIKODE.

BY ADV. SRI.P.SAMSUDIN

RESPONDENTS:
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1. RABIYATH , AGED 27 YEARS
D/O LATE MAMMAD KOYA, KALATHINGAL HOUSE
VELATTUPARAMB P.O, KODAKKAD, CHETTIPPADI (VIA)
MALAPPURAM DISTRICT

2. THESNI 4 YEARS (MINOR) REPRESENTED BY MOTHER 1ST RESPONDENT

BY ADV. SRI.K.K.MOHAMED RAVUF

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

 APPENDIX

Ext.P1: A true copy of the petition in O.P 204/2006 dated 01.04.2006 before the Family Court Kozhikode.

Ext.P2: A true copy of the order dated 05.02.2007 in O.P 622/2006 on the file of Family Court Malappuram

Ext.P3: A true copy of the order dated 05.02.2007 in O.P 623/2006 on the file of Family Court Malappuram

Ext.P4: A true copy of the order dated 05.02.2007 in MC 633/2006 on the file of Family Court Malappuram

Ext.P5: A true copy of the affidavit and petition in I.A No. 520/2007 in O.P 622/2006before the Family Court, Malappuram

Ext.P6: A true copy of the order of this court in RP(FC) No.190/2007 dated 13.04.2007

Ext.P7: A true copy of the receipt for payment of amount dated 09.05.2007

Ext.P8: A true copy of the petition in CMP 1468/2007 in M.C 633/2007 before the Family Court Malappuram

Ext.P9: A true copy of the common order dated 06.08.2007 in I.A 520/2007, IA 521/2007 and CMP 1468/2007 of the Family Court Malappuram

Ext.P10: A true copy of the proof affidavit in O.P 623/2006 on the file of Family Court Malappuram

//True copy//

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KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

W.P.(C) No. 26990 of 2007

Dated this the 10th day of October 2007

JUDGMENT

Kurian Joseph,J.

Petitioner is aggrieved by Ext.P9 order passed by the Family Court Malappuram. It is a common order passed in three interlocutory applications. These three applications were filed for setting aside the exparte orders in O.P Nos. 622 & 623 of 2006 and M.C. No. 633 of 2006 on the file of the said court. The Family Court allowed the application by a common order dated 06-08-2007, according to the petitioner, imposing very onerous conditions. Though, the learned counsel for the respondents contended that the writ petition is not maintainable, we are of the view that, it in the interests of justice, that the parties are relegated to pursue the disputes on merits. It is submitted that the applications filed by the petitioner before the Family Court are within the time. Be that as it may, having regard to the entire facts and circumstances, the interests of the parties and interests of justice would be met, the writ petition is disposed of imposing the following conditions.

2. The petitioner shall deposit an amount of Rs.50,000/- within a period of one month from today. On such deposit it will be open to the

respondents to withdraw the same. If the amount is deposited it will be adjusted by the Family Court towards the claim made by the respondents towards maintenance. The petitioner shall continue to pay the pendente lite maintenance. The parties will appear before the Family Court on 15-11-2007 . Thereafter the Family Court shall dispose of the cases within another four months . In case the conditions as stated above are not satisfied, the writ petition will stand dismissed.

3. The Family Court also will credit the said amount with other deposits made by the petitioner towards the liability of the petitioner for maintenance. However Rs. 50,000/- mentioned as above, shall be deposited.

KURIAN JOSEPH, JUDGE

HARUN-UL-RASHID,JUDGE

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